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T H E
CLERGY
Vindicated,
O R T H E
R I G H T S
A N D
P R I V I L E G E S
That belong to them,
ASSERTED;
According to the
Laws of England.

M O R E

Particularly, touching the Sitting of BISHOPS
in PARLIAMENT; and their making
Proxies in Capital Cafes.

L O N D O N,
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T H E
RIGHTS and PRIVILEGES
OF THE
CLERGY,
According to the
Laws of England.

THe Clergy of *England*, or the whole number of those that are *De Clero Domini*, of the Lord's Lot, or Share, as the Tribe of *Levi* was in *Judea*, is, according to our Law, twofold; *Clerus Major*, and *Clerus Minor*; the Greater and Lesser Clergy: The former doth comprehend the Barons Spiritual, or Lords of Parliament; that is to say, the Arch-Bishops and Bishops. The later contains Arch-Deacons, Deans, Prebends, Parsons, Vicars, and Chaplains. Of both these kinds I will treat severally, and apart. But before I do so, I shall give the Reader an Account in general, of the Ecclesiastical State of the Church of *England*, as I find it described by Mr. *Cambden*, and Sir *Edward Coke*.

Mr. *Cambden* tells us, that *England* hath two Provinces; and accordingly, two Arch-Bishops; to wit, the Arch-Bishop of *Canterbury*, Primate and Metropolitan of all *England*; and the Arch-Bishop of *York*. Under these are twenty five Bishops. To the Arch-Bishop of *Canterbury* are subject, twenty two. To the Arch-bishop of *York*, the other three.

Now, what Bishopricks these be, with the Shires and Diocesses that are at this day under their Jurisdiction, follow thus.

In the Province of Canterbury.

The Bishoprick of *Canterbury*, together with that of *Rocheſter*, containeth under it *Kent* it ſelf.

The Bishoprick of *London* hath under it, *Effex*, *Middleſex*, and part of *Hertfordſhire*.

The Bishoprick of *Chicheſter* hath belonging to it, *Suſſex*.

The Bishoprick of *Wincheſter* comprifeth *Southamptonſhire*, *Surrey*, and the Iſle of *Wight*, *Gernſey*, and alſo *Jerſey*; Iſlands lying againſt *Normandy*.

The Bishoprick of *Salisbury* comprehendeth *Wiltſhire* and *Berkſhire*.

The Bishoprick of *Exeter* containeth *Devonſhire* and *Cornwal*.

The Bishoprick of *Bath* and *Wells*, joyned together, hath under it *Somerſetſhire*.

The Bishoprick of *Gloceſter* hath belonging to it *Gloceſterſhire*.

To the Bishoprick of *Worceſter* is ſubject *Worceſterſhire*, and part of *Warwickſhire*.

To the Bishoprick of *Hereford*, *Hereford*, and part of *Salop*, or *Shropſhire*.

The Bishoprick of *Coventry* and *Litchfield* joyned together, have under it *Staffordſhire*, *Derbyſhire*, and the other part of *Warwickſhire*; as alſo, that part of *Shropſhire*, which lieth toward the River *Repil*.

Then the Bishoprick of *Lincoln*, which of all others is the greatest, is bounded with *Leicestershire*, *Leicestershire*, *Huntingdonshire*, *Bedfordshire*, *Buckinghamshire*, and the other part of *Herefordshire*.

The Bishoprick of *Ely* pertaineth *Cambridgeshire*, and the Isle of *Ely* it self.

Under the Bishoprick of *Norwich* is *Northfolk* and *Suffolk*.

The Bishoprick of *Oxford* hath under it *Oxfordshire*.

The Bishoprick of *Peterborough* comprizeth *Northamptonshire* and *Rutlandshire*.

Under the Bishoprick of *Bristol* is *Dorsetshire*.

Unto which eighteen Diocesses in *England* are to be added those of *Wales*; which are both bereft of their own peculiar Arch-Bishoprick, and made also fewer in number; seven being brought scarce to four: to wit, The Bishoprick of *Meneva*, having the Seat at *St. Davids*, the Bishoprick of *Lundiff*, the Bishoprick of *Bangor*, and the Bishoprick of *St. Asaph*.

In the Province of York.

The Bishoprick of *York* comprehendeth *Yorkshire* it self and *Nottinghamshire*.

The Bishoprick of *Chester* containeth *Cheeshire*, *Richmondshire*, *Lancashire*, part of *Cumberland*, of *Westmoreland*, and of *Derbyshire*.

The Bishoprick of *Durham* hath *Durham* it self under it, and *Northumberland*.

The Bishoprick of *Carlisle* containeth within it part of *Cumberland* and the County of *Westmoreland*.

Besides; there are in *England* Deanries twenty six, whereof thirteen were ordained by *Henry* the Eighth in the greater Cathedral Churches, after the Monks were thrust out. Arch-Deanries, sixty. Dignities and Prebends, five hundred forty four. Numbered also there are Parish Churches under Bishopricks, nine thousand two hundred eighty four; of which threethousand eight hundred forty five be Appropriate. Now, Appropriate Churches those are called, which by the Pope's Authority, coming between with consent of the King, and the Bishop of the Diocess, were upon certain Conditions tyed, or Instruments united annexed and incorporated for ever, unto Monasteries Bishopricks, Colledges and Hospitals, endowed with small Lands, either for that the said Churches were built within their Lordships and Lands, or granted by the Lords of the said Lands. Which Churches afterwards, when the Abbies and Monasteries were suppressed, became Lay Fees, to the great dammage of the Church. Thus much Mr. *Cambden*.

As for Sir *Edward Coke*, he informeth us, That the Ecclesiastical State of *England* is divided into two Provinces, or Arch-Bishopricks; viz. Of *Canterbury*, and of *York*.

The Arch-Bishop of *Canterbury* is styled, *Metropolitanus*, & *Primus Totius Angliae*: and the Arch-Bishop of *York*, *Primus Angliae*.

Each Arch-Bishop hath within his Province Suffragan Bishops of several Diocesses.

The Arch-Bishop of *Canterbury* hath under him within his Province, of ancient Foundations; viz. *Rocheſter* his Principal Chaplain, *London* his Dean, *Wincheſter* his Chancellor, *Norwich*, *Lincoln*, *Ely*, *Chicheſter*, *Salisbury*, *Exeter*, *Bath* and *Wells*, *Worceſter*, *Coventry* and *Litchfield*, *Hereford*, *Landaff*, *St. Davids*, *Bangor*, and *St. Asaph*; and four founded by King *Henry* the Eighth, erected out of the Ruins of dissolved Monasteries; that is to say, *Gloceſter*, *Bristol*, *Peterborough*, and *Oxford*.

The Arch-Bishop of *York* hath under him four, viz. The Bishop of the County Palatine of *Cheſter*, newly erected by *Henry* the Eighth, and annexed by him to the Arch-Bishop of *York*; the County Palatine of *Durham*, *Carlisle*, and the Isle of *Man*, annexed to the Province of *York* by *Henry* the Eighth. But a greater number this Arch-Bishop had, which time hath taken from him.

Every Diocess is divided into Arch-Deanries, whereof there be sixty. And every Arch-Deanry is divided into Deanries; and Deanries again into Parishes, Towns and Hamlets.

Having thus given my Reader an Account, how the Ecclesiastical State of *England* standeth at this day; I come to speak of the Clergy, according to the division thereof, by me before given; viz. Into the Greater and Lesser Clergy.

First, Of the Greater or Superior Clergy; comprehending the Prelates, the Arch-Bishops and Bishops.

THat the Law of *England* may be the better understood, concerning our Superior Clergy, I shall reduce it to these Particularities following, which are not unworthy of the Reader's Observation.

1. Who the Founder and Patron of all Bishopricks.
2. To whom the Spiritualities and Temporalities of Bishops appertain, *Sede Vacante*.
3. How Bishops were anciently made.
4. Their Jurisdiction, what, and whence derived.
5. Their Courts.
6. By whom only commanded to certifie.
7. Bishops Proceedings in Ecclesiastical Courts, under the Name, Style, Seal of the Bishops, how warrantable.
8. With what Council they are assisted.
9. Their Dominion and Property relating to Temporalities.
10. What the King hath after every Bishop's death.
11. Bishopricks, whether Saleable.
12. Their Right of Sitting in Parliament.
13. Their Right of making Proxies in Cases of Life and Death.
14. Statutes, where made without them.
15. Their Privileges as they are Lords of Parliament.
16. Their Precedency.
17. Their Excommunications.

1. The Founder and Patron of all Bishopricks.

IT appeareth by our Books, that all Arch-Bishops and Bishops of *England* have been founded by the Kings of *England*; and therefore it hath been declared in Parliament, that the Holy Church of *England* was founded in the State of Prelacy within this Realm, by the King and his Progenitors. But here then may be queried, who were the first Founders of the Bishopricks in *Wales*?

It is answered, That the Bishopricks in *Wales* were founded by the Princes of *Wales*; and the Principality of *Wales* was holden of the King of *England*, as of his Crown: and when the Prince of *Wales* committed Treason, Rebellion, &c. the Principality was forfeited, and the Patronages of the Bishops annexed to the Crown of *England*. So as the King is to have Pensions for his Chaplains, and Corodies for his Vadeaters, of them, as of Bishops founded by himself.

Co. Litt. f. 97. a. 134. a. 344. a. Co. 2. Inst. f. 3. Stat. 25. E. 1. Carlisle.
10. H. 4. 6. b. Co. Litt. 27. a. 20. 2. Inst. f. 125. On the Stat. of West. 1. c. 17.
 2. To whom the Custody of the Spiritualities and Temporalities of Bishops do appertain, *Sede Vacante*.

The Custody of the Temporalities of every Arch-Bishop and Bishop (says Coke) within the Realm, and of such Abbies and Priories as were of the King's Foundation.

Foundation, after the same became void, belonged to the King, during the Vacation thereof by his Prerogative. For, as the Spiritualties belonged, during that time, to the Dean and Chapter, *de Communi Jure*, or to some other Ecclesiastical Person, by Prescription or Composition; so the Temporalties came to the King as Founder. And this doth belong to the King, being *Patronus & Protector Ecclesiæ*, in so high a Prerogative incident to his Crown, as no Subject can claim the Temporalties of an Arch-Bishop, or Bishop, when they fall, by Grant or Prescription.

3. How Bishops were, and how now made.

Co. Lit. f. 134. a.
344. a. Co. Lib. 3
Dean and Chapt.
of Norwich's
case, Rolls Rep. 2.
part. f. 102.
Davy's Rep. f. 46.
a. de Capitula-
riter congregatis

IT is apperanted by our Books of Law and History, that at the first all the Bishopricks in England were Donative, *per Traditionem Baculi*; i. e. the Crosier, which was the Pastoral Staff: and *Annuli*, the Ring, whereby he was married to the Church. King Henry the first being requested by the Bishop of Rome to make them elective, refused it. But King John, by his Charter, bearing Date, *Quinto Junii, Anno Decimo Septimo*, granted that the Bishopricks should be Eligible; which afterwards was confirmed by divers Acts of Parliament. And afterward the manner and order, as well of Election of Arch-Bishops and Bishops, as for the Confirmation of the Election and Consecration, is enacted and expresse in the Statute of the Twenty fifth of Henry the Eighth. But by the Statute of the thirty first of Henry the Eighth, and the first of Edward the Sixth, they were made Donative by the King's Letters Patents. Both which Statutes are repealed, and the Statute of the twenty fifth of Henry the Eighth, doth yet remain in full force and effect.

4. Their Jurisdiction, what, and whence derived.

AS to the Jurisdiction and Authority that appertains to Bishops, are considerable two Particulars.

1. Whence this Jurisdiction is derived.
2. The Extent and Subject Matters of this Jurisdiction.

1. Whence derived.

The King of England is, and of Right always was, the Fountain of all Justice and Jurisdiction. in all Causes, as well Ecclesiastical as Civil, within his Dominions. And this is evident our by Books.

Co. lib. 9. Hen-
loes Case

The Right Reverend Prelate, Matthew Parker, Arch-Bishop of Canterbury, a man very expert in matters of Antiquity, affirms in his Book set forth in Latin, Anno Domini, 1573. *Quod Rex Angliæ, olim erat Conciliorum Ecclesiasticorum præses, vindex temeritatis Romanae, Propugnator Religionis, nec ullam habebant Episcopi Auctoritatem præter eam quam a Rege acceptam referebant, Jus testamenti probandi non habebant, Administrationis potestatem cuique delegare non poterant.*

Davy's Reports,
f. 51 b. 52. a.

Vide Davy's Re-
ports, Le Case de
Pramunire, 97. b.
98. a.

It was resolved in the Tryal touching Legitimation, and Bastardy; that although all Matrimonial Causes have been a long time determinable in the Ecclesiastical Courts, and are now properly within the Jurisdiction and Cognizance of the Clergy. Yet, *Ab Initio, non fuit sic*. For, as well Causes of Matrimony, as Causes Testamentary, were Civil Causes, and appertained to the Jurisdiction of the Civil Magistrate, as it is well known to all Civilians: until the Christian Emperors and Kings, for the honouring of Prelates of the Clergy, have granted or allowed to them the Cognizance and Jurisdiction in those Cases.

And therefore the Kings of England, although they have allowed the Prelates of the Church to exercise their several Jurisdictions in those Causes which properly appertained to their Cognizance; yet, by the Rules of the Common Law, he hath

hath a Superintendency upon their proceeding : with power of Direction, when and how they shall proceed ; and of Restraint and Correction, if they proceed not duely and orderly in many Cafes ; as it is manifested by the Writs of several natures directed to the Bishops : whereby the King commands them to certifie *Bastardy, Excommunication, Profession, Ascouplement in Loyal Matrimony, Of Admitting Clerks, De Cautione Admittenda, &c.* And also, by Writs of *Prohibition, Consultation, and Attachments for Prohibition.*

2. What is their Jurisdiction.

For the deciding of Controversies (says Sir Edward Coke) and distribution of Justice, there be two distinct Jurisdictions. The one Secular, and General, for that it is guided by the common and general Law of the Realm. The other Ecclesiastical, limited to certain spiritual and particular Cafes ; and the Court wherein the Causes are handled, is called *Forum Ecclesiasticum* ; in which the Bishops are Judges, and immediate Officers to the King's Courts of Justice in Causes Ecclesiastical. Co.Lit. f.96.a.

Now, the Spiritual, or Ecclesiastical Causes, according to the usage and custom of England, are Blasphemy, Apostacy from Christianity, Heresies, Schisms, Holy Orders, Admissions, Institution of Clerks, Celebration of Divine Service, Rights of Matrimony, Divorces, General Bastardy, Subtraction and Right of Tithes, Oblations, Obventions, Dilapidations, Excommunication, Reparation of Churches, Probate of Testaments, Administrations, and Accounts upon the same, Symony, Incest, Fornications, Adulteries, Sollicitation of Chastity, Pensions, Procurations, Appeals in Ecclesiastical Cafes, Commutation of Penance. All which are determined by Ecclesiastical Judges.

That the Reader may the better know the Extent and Latitude of the Episcopal Jurisdiction and Authority, let him take with him these Rules that I have met withal in our Books.

1. Rule, That where the Right is Spiritual, and the Remedy therefore only by the Ecclesiastical Law, the Cognisance thereof doth appertain to the Ecclesiastical Court. Co.Lit. 96 a.

2. When the Right of Tithes shall be tried in the Spiritual Court, and the Spiritual Court hath Jurisdiction thereof, that other Courts shall be outed of their Jurisdiction. Co.Lib.13.f.172. Case of Modus decimandi.

3. Where the Common, or Statute Law, giveth Remedy in *Foro Seculari* (whether the matter be Spiritual or Temporal) the Cognisance of that Cause belongeth to the King's Temporal Courts only, unless the Jurisdiction of the Ecclesiastical Court be saved, or allowed by the Statute to proceed, according to the Ecclesiastical Laws. Co.Lit.96.b.

4. *Cujus Juris, i.e. Jurisdictionis est Principale, ejusdem Juris erit Accessorium.* Or *Consonans Rationi, quod Cognitio Accessarii, in Curia Christianitatis sit, ubi Cognitio Cause Principalis ad forum Ecclesiasticum noscitur pertinere.* Co.Lib.13.Col-lins and Hardinger's Case, Co.Lib.13.Case de Modo decimandi.

I will conclude this Section with this Remark. The Office of Episcopacy is not from the King, but of God. The Place, Station and Power wherein that Office is exercised, is from the King. It is the King that gives the Bishoprick : It is God that makes the Bishop. A Sovereign Prince claims not the Power of ordaining a Pastor in the Church. On the other side ; Who but Princes can take upon them to have power to erect, and dispose of Episcopal Seas, within their own Dominions.

3. Their Courts.

THe Courts wherein the Bishops exercise their Jurisdiction in Matters Spiritual, or Ecclesiastical, are these following.

1. The

1. *The Court of Convocation.*

This Court is styled, or called the Convocation of the Clergy ; who are assembled for Consultation, upon matters Ecclesiastical in time of Parliament.

It consisteth of two distinct Houses. The one called the Higher Convocation House ; where the Arch-Bishops and Bishops sit severally by themselves. The other the Lower Convocation-House ; where all the rest of the Clergy are bestowed.

And, as there be two Houses of Convocation, so there be two Prolocutors ; one of the Higher House, the other of the Lower House : who presently, upon the first Assembly, is, by the motion of the Bishops, chosen by the Lower House, and presented to the Bishops for their Prolocutor ; that is, the Man by whom they mean to deliver their Resolutions to the Higher House, and to have their own House especially, ordered and governed.

His Office is, to cause the Clerk to call the Names of such as are of the House when he seeth cause, to cause all things propounded to be read by him, to gather the Suffrages, and such like.

Those that sit in this same Lower House are called the Proctors of the Clergy ; which are chosen and appointed to appear for Cathedral, or other Collegiate Churches ; as also, for the Common Clergy of every Diocese, at the Parliament. Whose Choice is in this sort.

First, The King directeth his Writ to the Arch-Bishop of every Province, for the summoning of all Bishops, Deans, Arch-Deacons, Cathedral and Collegiate Churches ; and generally, of all the Clergy of his Province, after their best discretion and judgment ; assigning them the time and place in the said Writ. Then the Arch Bishops proceed in their accustomed Course. One Example may serve to shew both.

The Arch-Bishop of *Canterbury*, upon his Writ received, directeth his Letters to the Bishop of *London*, as his Dean-Provincial ; first citing himself peremptorily, and then willing him to cite, in like manner, all the Bishops, Deans, Arch-Deacons, Cathedral and Collegiate Churches ; and generally, all the Clergy of his Province, to the place, and against the day fixed in the Writ. But directeth withal, that one Proctor sent for every Cathedral or Collegiate Church, and two for the Body of the Inferior Clergy of each Diocese, may suffice. And by vertue of these Letters, authentickly sealed, the said Bishop of *London* directeth his like Letters, severally, to the Bishop of every Diocese of the Province, citing them in like sort ; and commanding them, not only to appear, but also to admonish the said Deans and Arch-Deacons personally to appear ; and the Cathedral and Collegiate Churches, as also the Common Clergy of the Diocese, to send their Proctors to the place, and at the day appointed. And also, willeth them to certifye the Arch-Bishop the names of all, and every one, so monished by them, in a Schedule annexed to their Letters Certificatory. The Bishops proceed accordingly ; and the Cathedral and Collegiate Churches, as also, the Clergy, make choice of their Proctors : Which done, and certified to the Bishop, he returneth all, answerably to his charge, at the day.

Having given an Account how the Proctors of the Clergy are chosen, it will be high time to shew the Jurisdiction of this Court ; what it was, and what now is.

1. *What their Jurisdiction was.*

Co. 4. Inst. 323. The Jurisdiction of this Court was, to deal with Heresies, Schisms, and other mere Spiritual and Ecclesiastical Causes ; and therein they did proceed, *juxta Legem Divinam, & Canones Sancta Ecclesia.*

Co. 4. Inst. f. 322. And, as they could never assemble together of themselves, but were always called together by the King's Writ ; so were they oftentimes commanded by the King's Writ, to deal with nothing that concerned the King's Laws ; of the Land, his Crown and Dignity, his Person, or the State of his Council or Kingdom.

2. *What their Jurisdiction now is.*

By the Statute of the twenty fifth of *Henry the Eighth*, C. 19. their Jurisdiction and Power is much limited and straitned, concerning their making of new Canons. For they must have both License to make them; and after they be made, the King's Royal Assent to allow them, before they be put in Execution.

But note, that in the end of that Act of the twenty fifth of *Henry the Eighth*, there is an expresse Proviso; that such Canons as were made before that Act, which be not repugnant to the King's Prerogative, the Laws, Statutes, or Customs of the Realm, should be still used and executed, as they were before the making of that Act.

It may be then queried whether, before the Statute of the twenty fifth of *Henry the Eighth*, a *Disine* granted by the Clergy could bind the Clergy, before the Royal Assent?

It is answered, that before this Act of the twenty fifth of *Henry the Eighth*, a *Disine*, granted by the Clergy at the Convocation, did not bind the Clergy, before the King's Royal Assent. Co. 4. Inst. 323. 20. H. 6. 13.

2. *The Prerogative Court of the Arch-Bishop.*

In this Court all Testaments be proved, and all Administrations granted, where the Party dying within the Province of the Arch-Bishop of *Canterbury*, hath *Bona Notabilia*, in some other Diocess than where he dieth; which regularly, is to be to the value of five pound; but in the Diocess of *London*, it is ten pound by Composition.

It is said, that Administration must be in two places, if the Intestate died in a Peculiar, within the Province of *York*; having Chattels in both. Cro. 1 Part. f. 719.

3. *The Court of the Arches.*

It is called in Latin, *Curia de Arcubus*; which is the chiefest and ancientest Consistory that belongeth to the Arch-Bishop of *Canterbury*, for the debating of Spiritual Causes. So called of the Church in *London*, where they sit, and hold this Consistory, called *Bow-Church*; which is in Latin, *Arcuum Ecclesia*, and called *Sancta Maria de Arcubus*. Which Church was dedicated to our Lady, and had that Denomination at first, of *Bow-Church*, by reason of building of the top of the Steeple Bow-wise, or Arch-wise, like so many Bows bent. The Judge of this Court is called Dean of the Arches, because with this Officialty is commonly joyned a peculiar Jurisdiction of thirteen Parishes in *London* (termed a Deanry) being exempted from the Authority of the Bishop of *London*; and belonging to the Arch-Bishop of *Canterbury*. Of which the Parish of *Bow* is one; and the chief, because the Court is there kept.

4. *The Court of Audience.*

The Court of Audience (says *Coke*) is kept by the Arch-Bishop, in his Palace; and medleth not with any matter, between Party and Party, of contentious Jurisdiction, but dealeth with matters *pro Formâ*: as, Confirmations of Bishops, Elections, Consecrations, and the like. And with matters of Voluntary Jurisdiction; as, the granting of the Guardianship of the Spiritualties, *Sede Vacante* of Bishops; Admission and Institution of Benefices, dispensing with Banes of Matrimony, and such like.

5. *The Court of Faculties.*

This Court belongeth to the Arch-Bishop. And, for the granting of Faculties, there is under him an especial Officer, called *Magister ad Facultates*, The Master of the Faculties.

Now, a Faculty in the Common Law, is used for a Privilege, or especial Power granted unto a Man by Favour, Indulgence and Dispensation, to do that which by the Common Law, he cannot do. As, to eat Flesh upon days prohibited ; to marry without Banes first asked ; to hold two or more Ecclesiastical Livings ; the Son to succeed the Father in a Benefice, and such like.

6. *The Court of Peculiars.*

The Arch-Bishop of *Canterbury* hath a Peculiar Jurisdiction, in divers Parishes within the City of *London*, and other Diocesses, &c.

7. *The Consistory Courts of the Arch-Bishops, and Bishops.*

Consistory (says one) is the Counsel-House of Ecclesiastical Persons ; and it is a word borrowed of the *Italians* ; or rather, the *Lombards* : and signifies as much as Tribunal. It is *Vocabulum utriusque Juris* ; and is used for the place of Justice, in the Courts Christian, or Spiritual.

The Consistory Court of every Arch-Bishop and Bishop in every Diocess in Ecclesiastical Causes, is holden before his Chancellor, or before his Commissary, in places of the Diocess far remote, and distant, from the Bishop's Consistory ; so as the Chancellor cannot call them to the Consistory, without great Travels and Vexation. And he is called *Commissarius Foraneus*.

From these the Appeal is to the Arch-Bishop of either Province respectively.

Note.

Official, *Officialis*, in the Canon Law, is especially taken for him, to whom any Bishop doth generally commit the Charge of his Spiritual Jurisdiction. And in this sense one in every Diocess is (*Officialis Principalis*) whom the Statutes and Laws of this Kingdom call Chancellor. 32. H. 8. c. 15. The rest, if there be more, are by the Canon Law called (*Officiales Foranei*) but with us are termed Commissaries.

8. *The Court of the Arch-Deacon, or his Commissary.*

This Court is to be holden where, and in what places the Arch-Deacon, by Prescription or Composition, hath Jurisdiction in Spiritual Causes within his Arch-Deaconry. And from him the Appeal is to the *Diocesan*. He is called, *Oculus Episcopi*.

9. *The Court of Delegates.*

This Court is so vulgarly called, because these Delegates do sit by force of the King's Commission, under the Great Seal, upon an Appeal to the King in the Court of *Chancery* in these Causes.

1. When a Sentence is given in any Ecclesiastical Cause, by the Arch-Bishop, and his Official.

2. When any Sentence is given in any Ecclesiastical Cause, in places exempt.

10. *The Court of the Commissioners of Review, Ad Revidendum.*

Albeit the Acts of 24. H. 8. c. 12. and 25. H. 8. c. 19. do, upon certain Appeals, make the Sentence definitive, as to any Appeal ; yet the King after such a definitive Sentence, as Supreme, may grant a Commission of Review, *ad Revidendum*. C. 4. Inst. 341. And so it was resolved in the King's Bench. Trin. 39. Eliz. *Hollingworth's Case*.

Thus much may suffice to have been spoken concerning the Episcopal, or Ecclesiastical Courts, I proceed to the Sixth Particularity.

6. By whom only Bishops are commanded to certifie.

IT is to be known, that none but the King's Courts of Record; as the Court of Common Pleas, the King's Bench, Justices of Goal-Delivery, and the like, can write to the Bishop, to certifie Bastardy, Mulierty, Loyalty of Matrimony, and the like Ecclesiastical Matters. For, 'tis a Rule in Law, that none but the King can write to the Bishop to certifie: and therefore no inferior Court, as *London, Norwich, York*, or any other Corporation, can write to the Bishop to certifie; but in those Cases the Plea must be removed into the Court of Common Pleas, and that Court must write to the Bishop, and then remand the Record again. And this was done in respect of the Honour and Reverence which the Law gave to the Bishop, being an Ecclesiastical Judge, and a Lord of Parliament, by reason of the Barony which every Bishop hath. And this was the reason a *Quare Impedit* did lie of a Church in *Wales*, in the County next adjoyning, for that the Lordships Marchers could not write to the Bishop; neither shall Cognizance be granted in a *Quare Impedit*, because the Inferior Court cannot write to the Bishop. And herewith agreeth Antiquity: *Nullus alius præter Regem, potest Episcopo demandare inquisitionem faciendam.* Bracton.

Co. Lit. f. 134. ab
Co. 4. Inst. 400.
Co. 2. Inst. f. 36,
325.

7. Bishops Proceedings in Ecclesiastical Courts, under the Name, Style, Seal of the Bishops, how warrantable.

At the Session of Parliament holden, *Anno 4^o Jac.* upon a Branch of an Act made at the first Session, in the first Year of King *James* his Reign, for Continuance and Reviving divers Statutes, it was enacted, that an Act made in the first Year of Queen *Mary*, Stat. 2. c. 2. entituled, *An Act for Repeal of certain Statutes made in the time of King Edward the sixth*, should stand repealed and void. A doubt was moved concerning the Bishops; which was divided into two Questions.

Co. 2. Inst. f. 684.
685, 686. Co.
Lib. 12. f. 7.

1. Whether any Bishop made, especially since the first day of that first Session of Parliament, were lawful or no?
2. Whether the Proceedings in the Bishops, or other Ecclesiastical Courts, being made under the Name, Style and Seal of the Bishops, were warranted by Law?

And the reason of these two Doubts was this: By the Statute of 1 E. 6. c. 2. it was enacted, that Bishops should not be Elective, as before that time they had been; but Donative, by the King's Letters Patents.

Secondly, By the said Act is provided, that all Summons, Citations, and Process in Ecclesiastical Courts should be made in the Name and Style of the King, and that their Process should be sealed with a Seal of the King's Arms, &c.

And it was strongly urged, that this Act of the first of *Edward* the Sixth was now in force; and consequently, all Bishops made (at the least, since it became of force) by Election, &c. and not by Donation, according to the said Act of the first of *Edward* the Sixth, are unlawful; and all their Process, Proceedings, being in their own Names, Styles and Seals (where, by the said Act, they ought to have been in the King's Name, and under his Seal) were all unlawful and void. And to prove that the said Act of Ann. 1. Ed. 6. was now in force, they alledged that this Act of the first of *Edward* the Sixth was repealed by the said Act of the first of *Mary* above mentioned; which Act of Repeal, being repealed by the said Branch of the first of *Jacobus*, consequently the said Act of the first of *Edward* the Sixth was thereby revived. For when an Act of Repeal is repealed, the first Act that

was

was repealed, is revived ; and herewith agreeth the Book-Case, in the fifteenth of *Edward the Third. Tit. Petition. Pl. 2.* And this is true, and cannot be denied.

The King having understanding hereof, and being informed of the Consequents thereof, being matters tending not only to the infinite prejudice of his Subjects in Cases of great Importance. (especially, if any Diocess had no Lawful Bishop, or Ordinary ; but, to the scandal and impeachment of his Majesty's Justice, not only in those Proceedings, but also in Administration of Justice, in certain Cases, in his Courts of Common Law at *Westminster*) commanded his two Chief Justices to consider of the said Objections, and to inform him of the true State thereof ; that either the scruple conceived might be cleared and satisfied, or the Inconvenience (if any were) timely provided for, and prevented : who, upon timely consideration had of the said Objection, agreed the Law to be (as the said Case was put) as it had been taken. But upon further search and consideration had, other manifest and direct matters were found to satisfy and clear the said scruple and question ; which afterwards was agreed and resolved accordingly, by the Chief Baron, and other Judges then attending in the Upper House of Parliament.

For the understanding whereof it is to be observed, that the said Act of the first of *Edward the Sixth* was repealed by three several Acts of Parliament ; viz.

1. By the said Statute of *Ann. 1. Mar.* in the whole.

2. By the Act of *1. & 2. Ph. & Mar. c. 8.* by sufficient words, as concerning the Name, Style and Seal of their Process, &c.

And Lastly, By the Statute of *1. Eliz. c. 1.* the whole Act of *1. E. 6.* is also repealed.

For, *Leges posteriores priores contrarias abrogant.* And as a Man that is strongly bound with three Cords, or Ligaments, albeit one or two of them be untied, or cut asunder, remains bound notwithstanding, by and with the second or third, which remain firm and untouched ; so a Statute repealed by force of three several Acts remains repealed so long as any of them remain in force, albeit one or two of them be made void. And therefore, although the Act of *1. Mar.* be repealed by *1. Jac.* yet the other two Acts remaining in force, the Act of *Ann. Prim. E. 6.* remains repealed.

First therefore, As to the Name, Style and Seal, &c. in Ecclesiastical Courts, it is enacted by the *1. & 2. Ph. & Mar. c. 8.* in these words.

And the Ecclesiastical Jurisdiction of the Arch-Bishops, Bishops and Ordinaries to be in the same state for Process of Suits, punishment of Crimes, and Execution of Censures of the Church, with knowledge of Causes belonging to the same ; and as large in those points as the said Jurisdiction was in *Ann. 20. H. 8.*

By which Clause, if the Act of Repeal of *1. Mar.* (now repealed) had never been made, the Act of *1. E. 6.* as to the Name, Style and Seal in Ecclesiastical Proceedings, had been repealed by this latter Act of *1. & 2. Ph. & Mar.*

Secondly, But it was objected, that the Act of *1. & 2. Ph. & Mar.* (which is the second Cord or Ligament) is repealed by the Act of *1. Eliz. c. 1.* To this it was answered, and resolved, that this second Cord or Ligament remains in force : for, true it is, that the Act of *1. Eliz.* repeals the Act of *1. & 2. Ph. & Mar. Secundum quid*, but not *Simpliciter* ; for the Act of *1. Eliz.* doth repeal every Branch and Article of *1. & 2. Ph. & Mar.* other than for such Branches as therein be excepted. And afterwards, by another Branch of the said Act of *1. Eliz.* it is enacted, that all other Laws and Statutes repealed, and made void by the said Act of *1. & 2. Ph. & Mar.* and not in that Act specially mentioned and revived, should stand, remain, and be repealed and void, as the same were before the making of that Act. But that Act of *1. Ed. 6.* (as it hath been often said) is sufficiently repealed by the Act of *1. & 2. Ph. & Mar.* as to the Name, Style and Seal, &c. and the Act of *1. Ed. 6.* is not specially mentioned and revived by the Act of *1. Eliz.* so the same remain repealed, by the Act of *1. & 2. Ph. & Mar.*

Thirdly, The third Act, which clearly repeals and annuls the Act of *1. Ed. 6.* as well for the making and constituting Bishops, as for the Name, Style and Seal of Process, is the Act of *1. Eliz. c. 1.* for that Act doth revive the Act of *25. H. 8. c. 20.* and further enacteth, that the same shall stand in full force and effect, to all Intents, Constitutions and Purposes. By which Act of *25. H. 8.* it is enacted as followeth.

And that of every Avoidance of any Arch-Bishoprick or Bishoprick, the King, his Heirs and Successors, may grant to the Prior and Covent, or to the Dean and Chapter, a License under the Great Seal, as of old time hath been accustomed to proceed to an Election of an Arch-Bishop, or Bishop; with a Letter Missive, containing the Name of the Person which they shall elect and chuse, &c. And according to this Statute, revived by *Ann. 1. Eliz.* all Arch-Bishops and Bishops at this day be made: and if they were made according to the Act of 1. E. 6. they were unlawful.

And further, it is enacted by the said Act of 25. H. 8. That every Person chosen, elected, invested and consecrated Arch-Bishop or Bishop, according to the form and effect of this Act, &c. shall do and execute, in every thing and things, touching the same; as any Arch-Bishop or Bishop of this Realm, &c. might at any time heretofore do. Which later Branch doth extend to all Process and Proceedings in Ecclesiastical Courts, and that the same shall be in such sort as the same were before the Act of 25. H. 8. and before that Act, the Name, Style and Seal of their Process, &c. were as now they be.

And the said Act of 1. Eliz. reviving the Act of 25. H. 8. doth impliedly repeal the Act of 1. E. 6. which had repealed the 25. H. 8. in both the said points: For, as by repealing of a Repeal, the first Act is revived; so by reviving of an Act repealed, the Act of Repeal is made of no force.

8. *The Bishops with what Council assisted.*

Every Bishop is assisted with a Council. For, seeing it was impossible that the Church of God should continue without Sects and Heresies, it was in Christian Policy thought necessary, that every Bishop should be assisted with a Council, and with a Chapter; and that for two Reasons.

*Co. Lib. 3. Le case
del Dean & Cha-
piter. f. 75. a.*

1. To consult with them in matters of difficulty, and to assist the Bishop in deciding of Controversies in point of Religion. And to this purpose every Bishop hath a Chair.

2. To consent to every Grant the Bishop shall make to bind his Successors; for the Law did not judge it reasonable to repose such Confidence in him alone. At first all the Possessions were to the Bishop, after, a certain Portion was assigned to the Chapter; therefore the Chapter was before they had any Possessions. And of Common Right the Bishop is Patron of all the Prebends, because their Possessions were derived from him. So that so long as the Bishoprick continues (the Dean and Chapter being his Counsel) remains, though they have no Possessions, as at first they were, when the Bishoprick consisted all of Spirituality.

Of their Dominion and Property.

Heretofore Bishops, with the Confirmation of the Dean and Chapter, might have made Leases for Lives or Years, without Limitation or Sting. And

Co. Litt. 44. a.

so might they have made Gifts in Tail, and Estates in Fee, at their Will and Pleasure. Whereupon, not only great decay of Divine Service, but Dilapidations, and other Inconveniencies ensued: and they were disabled and restrained by several Acts of Parliament, to make any Estate, or Conveyance to the King at all, or to the Subject; but there is excepted out of the Restraint or Disability, Leases for three Lives, or twenty one Years, with Reservation of Rent, and with other Provisions and Limitations.

To be short, as the Bishops cannot utterly divest themselves of their Lands and Revenues, so ought not their Rights to be liable to the Sacrilegious Rapine of others; for, *Quod datum est Ecclesie, Deo datum est.* Which sacred Maxim the Royal Martyr very well understood, when he used these very words, viz.

There are ways enough to repair the Breaches of the State, without the Ruines of the Church; as I would be a Restorer of one, so I would not be an Oppressor of the other, under the pretence of Publick Debts. The Occasions contracting them were had enough, but such a discharging of them would be much worse. I pray God neither I, nor mine, may be accessory to either.

And indeed, well might this most Religious Prince thus pray; for, without doubt, the Sin of Sacrilege is a very horrid Crime. *Proximum Sacrilegio Crimen est, quod Majestatis dicitur*, Treason is a petty Sin, in respect of Sacrilege. St. Austin seems to give the Reason; *Tanto gravius est peccatum, quanto committeri non potest, nisi in Deum.* Thou that abhorrest Idols, committest thou Sacrilege? Which words of the Apostle St. Paul are specially to be noted by them that pretend mainly against Superstition and Idolatry, yet are hotly set for Sacrilege.

Further, As this Sin of Sacrilege in its own Nature is very abominable, so it is dangerous more ways than one.

1. To private Men that commit it. Make them like a Wheel, as Stubble before the Wind, fill their faces with shame, who said, *Let us take the Houses of God to our selves in possession*, Plak. 83.

2. To more publick Persons, even to the Heads, and Principal Members of the Commonwealth, the Kings and Princes thereof; see *Daniel c. 5.* concerning *Belshazzar*.

Our own Annals tell us of King *William Rufus* and his Nephew, the Son of *Robert*, Duke of *Normandy*; both slain in Hunting, in the same Forest that the Conqueror his Father, and Grandfather to his Nephew, had made, and himself had augmented, with the utter Ruin of many Chappels, Churches and Religious Houses.

3. To the Commonwealth it self. This Sin in *Achan* became not a Snare to himself, in which he was taken; but all *Israel* was troubled by the sin of that one *Achan*; *Joshua c. 7.*

But after all this, it may be demanded of me, whether this will take away the nature of sin from the Alienation of Church-Lands, that it is done by a National Assembly of the States in Parliament?

Answer, that this will not take from Sacrilege the nature of sin, that it is done

done by a National Assembly, giving their Sanction thereunto: for the Proceedings and Sanctions of a National Council must be by Rule from God; otherwise they become more out of measure sinful, than Actions of like Quality in private Men. The Laws of State are not therefore just, because enacted by the State; but when they agree with the common Rules of Justice, that God has bestowed upon the Sons of Men.

To conclude, To do that by a Law, which should be enacted for prevention of Sin, and not for Commission, is to make it the more sinful. *Shall the Throne of Iniquity have Fellowship with thee, that frameth mischief by a Law?*

10. What the King hath after the Death of every Bishop.

IT appeareth by many Records in the Reign of Henry the Third, and Edward the Second; that, by the Law and Custom of England, no Bishop could make his Will of his Goods or Chartels coming of his Bishoprick, &c. without the King's License. *Co. 2. Inst. 491. 1. Co. 4. Inst. f. 388.*

The Bishops, that they might freely make their Wills, yielded to give to the King, after their Deceases respectively, for ever, six things.

1. Their best Horse, or Palfrey, with Bridle and Saddle.
2. A Cloak with a Cape.
3. One Cup with a Cover.
4. One Basin and Ewer.
5. One Ring of Gold.
6. His Kennel of Hounds.

For these a Writ issueth out of the Exchequer after the Decease of Every Bishop.

11. Bishopricks whether Saleable.

AS, *In omni re nascitur res qua ipsam rem exterminat*, (as the Worm in the Wood, or the Moth in the Cloth, and the like) so often times no Profession receives a greater blow, than by one of their own Coat. For Ranulph, an Ecclesiastical Person, and King William Rufus his Chaplain, was a Factor for the King in making Merchandize of Church-Livings; in as much as when any Archbishoprick, Bishoprick, or Monastery became void, *Co. 2. Inst. f. 15.*

First, He perswaded the King to keep void a long time; and converted the Profits thereof, sometime by Letting, and sometime by Sale of the same: whereby

whereby the Temporalities were exceedingly wasted and destroyed.

Secondly, after a long time no man was preferred to them, *per Traditionem Annuli & Baculi*; by Livery of Seizin, as the old fashion was; but by Bargain and Sale from the King, to him that would give most: by means whereof the Church was stuffed with unworthy and insufficient Men; and many Men of lively Wits, and towardliness in Learning, despairing of Preferment, turned their Studies to other Professions. This *Ranulph*, for serving the King's Turns, was advanced; first, To be the King's Chancellor, and after to be Bishop of *Durham*. Who after his Advancement to so high Dignities, made them Servants to his Sacrilegious and Symoniacal Designs. King *Henry* the First, seeing this mischief, and foreseeing the great inconvenience that would follow thereupon, was contented, for his own time, to bind his own hands; to the end the Church now naked and bare, might receive some comfort, and have means to provide things necessary for their Profession and Calling. He thereupon, at his Coronation made a Charter to this effect. *Quia Regnum oppressum erat injustis exactionibus, ego, in Respectu Dei, & amore quem erga vos omnes habeo, Sanctam Dei Ecclesiam imprimis liberam facio, Ita quod nec vendam, nec ad firmam ponam, nec Mortuo Archiepiscopo, sive Episcopo, vel Abbate, aliquid accipiam de Domino Ecclesia, vel hominibus ejus, donec Successor eam ingrediatur, & omnes malas Consuetudines, quibus Regnum Anglie opprimebatur, inde aufero.*

Vide Magna Charta.

He committed the said *Ranulph*, then Bishop of *Durham*, to Prison for his intolerable Misdemeanors and Injuries to the Church: where he lived without love, and died without pity, saving of those that thought it pity he lived so long.

I will close this Section with a Sentiment of the Imperial Law, touching buying and selling.

C. 1. 3. 31.

Non pretio, sed precibus ordinetur Antistes. Tantum ab ambitu debet esse sepositus, ut quærat cogendus, rogatus recedat, invitatus effugiat, sola illa suffragetur necessitas excusandi. Profecto enim indignus est Sacerdotio, nisi fuerit ordinatus invitatus. Nemo gradum Sacerdotii pretii venalitate mercetur, quantum quisque mereatur, non quantum dare sufficiat, aestimetur.

Episcopus non pretio, sed precibus ordinandus est. Gothofredus.

12. Their Right of Sitting in Parliament.

THE Spiritual Lords do sit in the King's great Council in Parliament, by the same Right that the Temporal Lords do; and that is by reason of their Ancient Baronies. For, although originally, all the Possessions of Bishops, Abbots and Priors were given and holden in *Frankalmoigne*; yet, shortly after the Norman Conquest, their Tenures were altered, viz. *Per Baroniam*; as appeareth by *Mathew Paris*, Anno 1070. 66. and of that Tenure have continued ever since, as shall be apparent by the Consultations of *Clarendon*, in the Reign of *Henry* the Second; by *Glanvil*, and other Authorities.

Co. 2. Inst. f. 6.

In the Constitution held at *Clarendon*, tempore H. 2. Ann. 1164. Certain Recapitulations of the Prerogative of the King and his People, then sought to be infringed by the Pope and his Clergy; it is thus expressed in the eleventh Article, *Archiepiscopi & Episcopi, & universa persona Regni, qui de Rege tenent in Capite,*

pit, habeant possessiones suas de Rege sicut Baroniam & inde respondeant Iustitiariis, &c. Regis & sicut Ceteri Barones debeant interesse Curia Regis cum Baronibus quousque perveniatur ad diminutionem Membrorum, vel mortem.

2. Glanvil, the most ancient Writer of the Laws of this Realm now extant, *Lib. 7. c. 1.* hath these words; *Notandum autem, quod nec Episcopus, nec Abbas quia eorum Baronia sunt de Eleemosyna Regis, & Antecessoris ejus, non possunt de Dominicis suis aliquam partem dare ad Remanentiam, sine assensu, & Confirmatione Domini Regis.*

3. My third Authority shall be a notable Record in the Reign of Henry the Third; and it is this.

Mandatum est omnibus Episcopis qui Conventuri sunt apud Glocestriam die Sabbathi in Crastino Sancta Katharina firmiter inhibendo, quod sicut Baronias suas (quas de Rege tenent) diligunt, nullo modo presumant Consilium tenere de aliquibus que ad Coronam Regis pertinent, vel que personam Regis, vel Statum suum, vel Statum Concilii sui contingunt. Scituri pro certo quod si fecerint, Rex inde se capiet ad Baronias suas. *Rot. Pat. 13. H. 3. 2. part. 1. de Prohibitione fact. Episcop.*

4. Mr. Camden in his *Britannia* tells us, that the two Arch-Bishops, and all the Bishops of England, be Barons of the Kingdom and Parliament, unto whom by Right and Custom it appertains, as to Peers of the Kingdom, to be with the rest of the Peers personally present at all Parliaments whatsoever; there to consult, to handle, to ordain, decree and determine, in regard of the Baronies which they hold of the King. For William the first a thing the Church-men of that time complained of, but those in the Age ensuing accounted it their greatest Honour) ordained Bishopricks and Abbies, which held Baronies in pure, and perpetual Alms, and until that time, were free from all Secular Service; to be under Military, or Knight-Service; enrolling every Bishoprick and Abbey at Will and Pleasure, and appointing how many Soldiers he would have every one of them to find for him and his Successors, in the time of Hostility and War. From that time, ever since (says he) those Ecclesiastical Persons enjoyed all the Immunities that Barons of the Kingdom did, saving only they were not to be judged by their Peers.

5. Sir Edward Coke, in several places of his Works, asserts, that the Bishops of England have been founded by the Kings of England, and do hold of the King by Barony, and have been all called by Writ to the Court of Parliament, and are Lords of Parliament. *Co. 2. Inst. f. 3. 79. 585. Co. Lit. 97. a. 94. a. Co. 4. Inst. f. 361.*

To what has been said in the proof of the Bishops Right of sitting in Parliament, this may be added; That it appeareth by all ancient Writers of our Laws and Histories, that the Arch-Bishops and Bishops of the Realm, in the ancient Saxons days; as well during the time that this Realm was divided into divers Kingdoms, as also after the uniting of them into one Monarchy, were called to the Parliament, or Assembly of States or Wise Men; not so much in respect of their Tenure; for, in those days all their Tenures were (as is said before) by *Frankalmoigne*: but especially for that Laws and Counsels of Men are then most currant and commendable, and have a more blessed issue and success, when they are grounded upon the fear of God, the Root and Beginning of all true Wisdom. And therefore our wise and Religious Ancestors called to their General Council, or *Witten Amote*, or Court of Wisdom (as they called it) those chief and principal Persons of the Clergy; which, by their Place and Profession, by their Gravities, Learning and Wisdom, might best advise what was the Law of God's acceptable Will and Pleasure, that they might frame their Humane Laws answerable; or, at least, not contrary and repugnant thereunto.

Judge Dodridge in his Treatise of Nobility concerning Barons by Tenure

To Second Judge *Dodridge* in the Probation of our Bishops sitting in the Assembly of States, or Wise Men, before the Conquest, I shall offer these Authorities following.

At a Parliament holden by King *Inas*, *Anno Domini* 727. the Statutes began thus; *Ego Inas Dei beneficio Rex, suasu & Instituto Cenredi patris mei, Hedda & Erkenwaldi Episcoporum meorum, omnium Senatorum meorum &c.*

The Conclusion of the Parliament holden, *Ann.* 940. by King *Athelstan*, at *Grately*, was thus. *All this was enacted in the great Synod; whereat was the Arch-Bishop Wolfhelme, with all the Noble Men, and Wise men, which King Athelstan called together. Co. Lit. 110. a. Co. 2. Inst. 268.*

King *Edouard*, and *Phlegmond*, Arch-Bishop of *Canterbury*, assembled a great Council of Bishops, and other faithful People, &c. *Matth. Westm. Lib. 1. sub Ann. 905.*

Ingulphus, who died before 1109. saith: *Rex Eldvedus convocavit Magnates Episcopos, Proceres & Optimates ad tractandum de publicis negotiis Regni: Co. 4. Inst. f. 3.*

The Reader may see more of this matter in the Preface of the Ninth Part of *Coke's Reports*.

13. Their Right of making Proxies, whensoever Question is had of the Attainder of any Peer.

IT appears by our Books of Law, that ever when Question is had of any Attainder of any Peer in Parliament, they depart the Higher House, and make their Procurators. For, by the Decrees of the Church, they may not be Judges of Life and Death.

10.E.4.6.b.

In the tenth Year of *Edward* the Fourth, it is said by *Littleton*; *Quantum Seignior est indict, &c. Ceo serra mand en le Parliament, & la le Seignior, Seneschall d'Angleterre luy mita as Respons & il dirra de Rien culpable & ceo serra trie per pares suos, &c. donques les Seigneurs Spirituels, que ne poient consent al mort de home, ferrount un Procurator en le Parliament.*

When a Lord is indicted, it shall be returned into Parliament, and there the Steward of England shall put him to answer, and he shall say, Not Guilty; and this shall be tried by his Peers: and then the Lords Spiritual, who may not consent to the death of any Man, shall make their Procurators in Parliament.

lib. 3. f. 153. A. B.

Stamford, in his Pleas of the Crown, informeth us; *Que Evesque ne ount lien en Parliament en Respect de leur nobilitie, mes en respect de leur Possession L'antient Baronies annexes a leur Dignities.* And he further says, that a Peer indicted of Treason or Felony, may, if the King please, be arraigned of it in Parliament: and then the Lords Spiritual shall make a Procurator for them. *Eo que per le Canonically Leges, ils mesmes ne doint condamner a suma Mort.*

Mr.

Mr. Justice *Dodridge*, on the Constitution of *Clarendon* of *Henry* the Second, before-mentioned, tells us thus. Here we see (says he) the Presence of the Bishops in the Parliament in respect of their Baronies : *Quousque perveniat ad diminutionem, &c.* For ever unto our times, when Question is had of any Attainder of any Peer in Parliament, they depart the Higher House, and make their Procurators. *Vide*, His Treatise of the Barons of the Realm.

A Peer of the Realm (says *Coke*) being indicted of Treason or Felony, or of Misprision, and duly transmitted to the Lords, may be arraigned thereof in the Upper House of Parliament; but then there must be appointed a Steward of *England*, who shall put him to answer. And if he plead, *Not Guilty*, he shall be tryed *per Pares suos*; and then the Lords Spiritual must withdraw, and make their Proxies. Co. 3. Inst. f. 31.

Again, says *Coke*, A Peer of the Realm, being indicted of Treason, or Felony, or Misprision of Treason, may be arraigned thereof in Parliament, a Lord Steward being appointed: and then the Lords Spiritual shall make a Procurator for them. Co. 4. Inst. 23.

By these four Authors, *Littleton*, *Stamford*, *Dodridge* and *Coke* (on whose Sleeve I should as soon pin my Faith, as upon any four Lawyers, famous in their Profession, since my first Admittance into an Inns of Court;) It is asserted, that the Prelates, upon their withdrawing in Capital Cases, have a Right to make their Procurators. They depart the House, not by vertue of any Rule at the Common Law, but in vertue of an old Ecclesiastical Canon. They make their Proxies, not as they are Spiritual Persons, but in respect of their Temporal Baronies. To be short, If I should hear, that the Opinion of these four most eminent Lawyers is over-ruled by our Sages, by vertue of that Spell called *Error Temporis*, it will cast me undoubtedly, not into an Admiration, but an Extasie.

14. Statutes where made without them.

Although the Bishops have a Right of sitting in Parliament, and ought always to be called to that great Council, yet Statutes have been good without their Lordships. And that in three several Cases.

1. If they voluntarily absent themselves, then may the King, the Nobles and Commons make an Act of Parliament without them. As, where any Offender is to be attainted of High Treason, or Felony, and the Bishops absent themselves, and the Act proceed, the Act is good and perfect.

2. If they be present, and refuse to give any Voices, and the Act proceed; the Act of Parliament is good without them.

3. Where the Voices in Parliament ought to be absolute, either in the Affirmative or Negative, and they give their Voices with Limitation or Condition, and the Act proceeds; the Act is good, for their Conditional Voices are no Voices. Examples for these Particulars the Reader may find in *Coke's 2. Inst. f. 585, 588.*

Note

Note, Albeit Statutes have been made without the Bishops, yet they are accounted one of the Estates of Parliament : as it appears by my Lord *Coke*, in the very beginning of the fourth Part of his Institutes. But it is pretended by some, that they are not : for if they were, then should they discuss Matters separately, by themselves, from the other Lords, as the Commons now do.

I deny the Consequence ; for our Books tell us ; That, at the first, both Houses sat together. Pray, how many Estates were they then ? If it be answered, that there were but two ; why ? then this shews that two Estates may discuss Matters together, both in one and the same House.

15. *Their Privileges, as they are Lords of Parliament.*

THE Bishops, in the Right of their Temporal Baronies, do enjoy all the Immunities that the Nobility, and Peers of Parliament do ; saving only, they are not to be judged by their Peers. And the reason of this is, because the Bishops cannot pass, in like Cases, upon the Tryal of any other of the Peers ; for that they are prohibited by the Canons of the Church, to be Judges of Life and Death. And reason would, that the other Peers should not try them : for this Tryal should be mutual, for as much as it is performed upon their Honours, without any Oath taken.

Now, the Privileges that the Bishops claim, as Peers of the Realm are such as these following.

1. The Person of a Bishop shall not be arrested, in Debt, or Trespass, by his Body.
2. If a Bishop be Demandant, or Plaintiff ; Tenant, or Defendant, there must be a Knight returned of his Jury, or else the Array may be quashed.
3. Arch-Bishops and Bishops are not bound to attend Leets, nor to take the Oath there administered.
4. A Day of Grace is never granted, where a Bishop is Tenant or Defendant.
5. If a Bishop be Defendant in Star-Chamber, or Court of Chancery, a *Sub-pœna* shall not be awarded ; but a Letter from the Lord Chancellor, or Lord Keeper, in lieu thereof.
6. Every Arch-Bishop or Bishop coming to the King at his Commandment, and passing by any of the King's Forests, may hunt and kill one or two of the King's Deer.
7. If a Bishop be Party to a Suit, and would be essoigned ; he that casts the Essoigne out, must put in Sureties to prove the Cause. Which is not usual in the Case of a Common Person.

8. If

8. If a Plaintiff recover against a Bishop, in an Action of Debt, or Trespass, upon such a Plea pleaded by him, or other Default in him; so that a Fine thereby doth grow to the King, and thereupon a *Capias pro Fine* issueth out against him; this shall not prejudice the Bishop, so as the Plaintiff may thereby take advantage by Prayer, that the Bishop shall abide in Execution. &c.

9. Whereas by a Statute made in 32. H. 8 c. 16. it is enacted, that the Subjects of the Realm shall not keep in their Families, or Houses, above the number of four Strangers born; nevertheless, by a Proviso in the said Act, every Lord of Parliament hath his Privilege allowed unto him, to keep in his Family the number of six Strangers born: any thing in that Act to the contrary notwithstanding.

10. By the Statute of *West.* 1. c. 34. If any Person shall divulge false Tales of any of the Lords of Parliament, by which Dissention may be betwixt the Commons and them, the Offender is to be imprisoned until he bring forth the Author.

In brief; My Lords, the Bishops (as 'tis said before) may challenge a Fruition of all the Privileges, in virtue of their Baronies, that the Lords Temporal can by virtue of theirs; saving only, the Bishops cannot be tryed by their Peers. Which manner of Tryal was (as I am informed) brought into this Realm by *William* the Conqueror, being answerable to the *Norman* and *French* Laws, and agreeable to the Customs *Feudal*; where almost all the Controversies arising between the Sovereign and his Vassal are tryed; *per Judicium Parium suorum*.

16. Their Precedency.

Sir *Edward Coke*, treating on the Statute of the thirty first of *Henry* the Eighth, c. 10. concerning the Precedency of the King's great Officers, hath these same words.

And first, for the Lords Spiritual (who sit in Parliament on the King's Right Hand) Coke 4. Inst. 361 amongst themselves.

1. The Arch-Bishop of Canterbury.
2. The Arch-Bishop of York on the same form.
3. The Bishop of London.
4. The Bishop of Durham.
5. The Bishop of Winchester.

And then all the other Bishops of both Provinces shall sit, and be placed after their Antienties, as before this Act was accustomed.

F

But

But having regard to the Lords, and Noble Peers of the Realm, both the Arch-Bishops have place above all the great Officers and Nobility in Parliament, Council and Commissions, saving in the Star-Chamber, the Lord Chancellor, or Lord Keeper hath the Precedency of them. But the other Bishops have place above all the Barons of the Realm; because they hold their Bishopricks of the King, per Baroniam; but they give place to Viscounts, Earls, Marquesses and Dukes.

Note, that in the penning of all Acts of Parliament, the Lords Spiritual have the Preseance of the Lords Temporal.

And this shall suffice for the placing of the Lords Spiritual in Parliament, &c. according to Sir Edward Coke. I will offer something out of Mr. Seagar, the famous Herauld, touching Preseance in Provincial Assemblies and elsewhere.

When the Arch-Bishop of *Canterbury* sitteth in his Provincial Assembly, he hath on his Right Hand the Arch-Bishop of *York*, and next unto him the Bishop of *Winchester*; and on the Left Hand the Bishop of *London*. But if it fall out, that the Arch-Bishop of *Canterbury* be not there, by the Vacation of his See; then the Arch-Bishop of *York* is to take his place: who admitteth the Bishop of *London* on his Right Hand, and the Bishop of *Winchester* to his Left; the rest sitting as they are Elders by Consecration. *C. Lib. 4. c. 24. Of Honours Military and Civil.*

A Bishop must do Reverence unto his Father at home; but, being in the Church, the Father shall follow him.

Between two Equals, he that is in his own Jurisdiction shall precede. As if an Arch-Bishop do come into a Diocess of a Bishop; notwithstanding he is a Person of more Dignity, yet ought he give Honour unto the Bishop, because his Presence doth not cancel his Authority. *C. Lib. 4. c. 24. Of Honour, Military and Civil.*

17. *Their Excommunications.*

EXcommunication (that is, the greatest Judgment upon Earth, being that which is ratified in Heaven) will be the better understood by these Particularities.

1. Its Definition.
2. Its Division.
3. The Writs that belong to it.
4. By whom it ought to be cerified.
5. The Power of it in a Christian Church.

First,

First, *Its Definition.*

Excommunication is thus defined by *Panormitan* : *Excommunicatio est nihil ali-* Co.Lit.133.b.
ud, quam Censura a Canone, Vel Judice Ecclesiastico prolata, & inflicta, privans
legitima Communionem Sacramentorum, & quandoque Hominum.

Secondly, *Its Division.*

This Excommunication thus defined by the Canonist, is twofold ; it is ei- Co.Lit.133.b.
 ther Lesser, or Greater.

The Lesser is, *Per quam quis a Sacramentorum participatione Conscientia, vel*
Sententia ardetur.

The Greater Excommunication is that which, *Non solum a Sacramentorum*
verum etiam fidelium Communionem excludit, & ab omni actu legitimo separat & divi-
dit.

Either of these disableth the Party to sue any Action in the Kings Courts :
 And yet our Books tell us, that every Excommunication disableth not the
 Party.

As for Example, If Bailiffs and Commons, or any other Corporation aggre- 30.E.3.15.Co.
 gate of many, bring an Action, *Excommungement* in the Bailiffs, shall not dis- Lit.134.a.
 able them, for that they sue and answer by Attourney ; otherwise it is of a sole
 Corporation.

But if Executors or Administrators be excommunicated, they may be dis-
 abled ; because they which converse with a Person excommunicate, are ex-
 communicate also.

If a Bishop be Defendant, an Excommunication by the same Bishop against Co.Lit.134.a.9
 the Plaintiff, shall not disable him : and it shall be intended for the same Cause, A.7.21.b.
 if another be not shewed.

Thirdly, *The several Writs that belong to it.*

There are three sorts of Writs appertaining to Excommunications.

The one is called *Excommunicato Capiendo.*

Another named, *Excommunicato Deliberando.*

The Third is styled, *Excommunicato Recipiendo.*

Excommunicato Capiendo, is a Writ directed to the Sheriff, for the Apprehen-
 sion of him that standeth obstinately excommunicated for forty days. For,
 such a one, not seeking his Absolution, hath, or may have his Contempt certi-
 fied, or signified into the Chancery : whence issueth this Writ, for the laying
 of him up, without Bail or Mainprize, until he conform himself.

And

And when he is justified, and hath made Agreement, then the Bishop shall send his Letters to the King, testifying the same : and then it shall be commanded to the Sheriff, to deliver him by a Writ called *Excommunicato Deliberando*.

But if the Person excommunicated, and for his Obstinacy being committed to Prison, be unlawfully delivered thence, before he has given Caution to obey the Authority of the Church ; then he is commanded to be sought for, and laid up again by a Writ, called *Excommunicato Recipiendo*.

Co.2.Inst.623. My Lord Coke tells us, that if a Man be excommunicated, and offer to obey, and perform the Sentence, and the Bishop refuses to accept it, and to assail him ; he shall have a Writ to the Bishop, requiring him, upon performance of the Sentence, to assail him, &c. And also the Party grieved may have his Action, upon his Case, against the Bishop, in like manner as he may, when the Bishop doth excommunicate him for a matter which belongeth not to Ecclesiastical Cognizance. Also, the Bishop in those Cases may be indicted at the Suit of the King.

Fourthly, *By whom Excommunication ought to be certified.*

40.Lit.134.B.
12.F.4.15.20.
H.6.17.11.H.
4.14. It is declared in our Books, that none can certify Excommengement, but only the Bishop, unless the Bishop be beyond Sea, or *in Remotis*, or one that hath ordinary Jurisdiction, and is Immediate Officer to the King's Courts. As the Arch-Deacon of *Richmond*, or the Dean and Chapter in time of Vacation.

11.H.4.62. But in antient time every Official or Commissary might testifie Excommengement in the King's Court ; and for the mischief that ensued thereupon, it was ordained by the King in Parliament, that none should testifie Excommengement, but the Bishop only.

33.E.3. Excom.
29. If a Bishop certify, that another Bishop hath certified him, that the Party which is his Diocesan, is excommunicated ; this Certificate upon anothers Report is not sufficient.

14.E.3. Excom.
8. If the Bishop certifieth the Excommunication under Seal, albeit he dieth, yet the Certificate shall serve.

Co.2.Inst.623.
28.E.3.97.14.
H.4.14. And it is to be observed, that at the Common Law, a Certificate of the Bishop, whereupon a *Significavit*, that is, a Writ *De Excommunicato Capiendo*, was to be granted, ought to expresse the Cause and the Suit against the Party, especially in the Certificate.

But it may be queried whether an Excommunication, and Certificate thereof, by any Foreign Power, can disable the Party ?

16.E.3. Excom.
4.4.H.7.15.
12.E.4.15. It is answered, that if the Bishop of *Rome*, or any other, having Foreign Authority, doth excommunicate any Subject of this Realm, and certifieth so much under his Seal of Lead ; this shall not disable the Party : For the Common Law disallows all Acts done in disability of any Subject of this Realm, by any Foreign Power out of the Realm, as things not Authentick. Whereof the Judges should give Allowance.

Fifthly,

Fifthly, *The Power of Excommunication in a Christian Church.*

A most Learned Doctor of our Church, that he may give the Church her due, and *Caesar* his, asserts, and proves these Particulars.

First, That under the Gospel there is a Power in the Officers of the Church, by virtue of Divine Institution, to exclude any Offenders out of the Christian Society, for transgressing the Laws of it.

The Second, That this Power doth remain formally in the Church, after its being incorporated into the Commonwealth.

The Third, That after the Churches being incorporated into the Commonwealth, the Right of Supreme Management of this Power, in an External way, doth fall into the Magistrates Hands ; consisting in these four things.

1. A Right of prescribing Laws for the Management of Church-Censures.
2. A Right of bounding the manner of Proceeding in Censures ; that in a settled Christian State, Matters of so great weight be not left to the Arbitrary Pleasure of any Church-Officers.
3. The Right of adding Temporal and Civil Sanctions to Church Censures, and so enforcing the Spiritual Weapons of the Church with the more keen and sharp ones of the Civil State.
4. To the Magistrate belongs the Right of Appeals, in case of unjust-Censure.

So that the Sum of all that has been said is this ; That though the Magistrate hath the main care of ordering things in the Church, yet (the Magistrates Power being Cumulative, and not Privative) the Church and her Officers retain the Fundamental Right of inflicting Censures on Offenders.

Thus much concerning the Superior Clergy ; containing the Arch-Bishops, and Bishops : I come now to treat of the Inferior Clergy ; under which are comprehended, Deans, Arch-Deacons, Parsons, Vicars, Prebends and Chaplains.

SECONDLY, OF THE INFERIOR CLERGY.

IT is to be known, that of Spiritual Functions there be three Degrees.

1. A Function which hath a Jurisdiction.
2. A Spiritual Administration with a Cure.
3. They, who have neither Cure, nor Jurisdiction.

Of these in their Order.

1. *Of a Function, which hath a Jurisdiction:*

Under this Rank may be placed Deans and Arch-Deacons.

1. *Deans:*

Dean, in Latine *Decanus*; which is derived of the Greek Word, Δεκά, *Co.Lit.95.1.* that signifieth *Ten*; for that he is an Ecclesiastical Secular Governor, and was anciently over ten Prebends, or Canons, at the least.

Howbeit, in *England* we use to call him a Dean, that is next under the Bishop, and Chief of the Chapter, ordinarily in a Cathedral Church, and the rest of the Society, or Corporation we call *Capitulum*, the Chapter.

Now,

Co. Lit. 95.1.

Now, Of Chapters there be in our Law two kinds, viz. The Antient; and the Latter.

And the Latter be of two sorts.

1. Those which were translated or founded by King *Henry* the Eighth, in place of Abbots and Covents, or Priors and Covents; which were Chapters whilst they stood: and these are new Chapters to old Bishopricks.

2. Where the Bishoprick was newly founded by *Henry* the Eighth (as *Chester*, and *Bristol*, &c.) there the Chapters are also new.

There is a great Diversity between the coming in of the Antient Deans and the New.

For, the Antient come in in much like sort as Bishops do. For they are chosen by the Chapiter, by a *Cogne de Eslier*, as Bishops be; and the King giving his Royal Assent, they are confirmed by the Bilhop. But they which are either newly translated, or founded, are Donative; and by the King's Letters Patents are installed.

Note, The Word Dean is also applied to divers, that are the Chief of certain peculiar Churches or Chappels. As,
The Dean of the King's Chappel.

The Dean of the Arches.

The Dean of *St. Georges* Chappel in *Windsor*.

The Dean of *Bocking* in *Essex*.

The Corporation, consisting of Dean and Chapter, they may joyntly purchase Lands and Tenements to the use of their Church and Successors. And every one severally, likewise may purchase, to the use of himself, and his Heirs.

Co. Lit. 342.1.

Grants at this day, made by a Dean and Chapter, or any other, having any Spiritual or Ecclesiastical Living, are restrained by Act of Parliament; so as they cannot grant any Rent-Charge, or make any Alienation, or any Leases, to bind their Successors, other than for Term of twenty one Years, or three Lives in Possession; whereupon the accustomed Rent, or more, shall be reserved.

2. Arch-Deacons.

Arch-Deacons, in Latine, *Archi-Deacanus*; and in Greek, Ἀρχιδιάκονος, ex Ἀρχός, i. e. Princeps & Διάκονος, i. e. Minister) is styled, *Oculus Episcopi*. Whose Court is to be holden (as is said before) where, and in what places, he either by Prescription, or Composition, hath Jurisdiction in Spiritual Causes, within his Arch-Deaconry. And from him the Appeal is to be Diocesan.

Hobart's Reports.
Hutton's Case.

It has been resolved, that if a Suit be before an Arch-Deacon, whereof, by the Statute of the twenty third of *Henry* the Eighth, the Ordinary may license the

the Suit to an higher Court ; that the Arch-Deacon cannot in such Case bawlk his Ordinary, and send the Cause immediately into the Arches. For, he hath no power to give a Court, but to remit his own Court, and to leave it to the next. For, since his Power was derived from the Bishop, to whom he is subordinate, he must yield it to him, of whom he received it. And it was said, that so it had been ruled heretofore.

2. Of a Spiritual Administration with a Cure.

Under this Form I place Parsons and Vicars.

1. Parsons.

Parson, in Legal Signification, is taken for the Rector of a Church Parochial ; and is called *Persona Ecclesia*, because he assumeth, and taketh upon him the Parson of the Church ; and is said to be siezed in *Jure Ecclesia*. And the Law had an excellent end herein, *viz.* That in his Person the Church might sue for, and defend her Right ; and also, be sued by any that had an elder and better Right. And when the Church is full, it is said to be, *Plena & Consultata*, of such a one Parson thereof ; that is, full, and provided of a Parson that may, *Vicem, seu personam ejus gerere*.

Persona Impersonata, Parson Impersonate, is the Rector that is in Possession of the Church Parochial, be it Presentative or Improprate ; and of whom the Church is full. *Co.Lit. 300.b.*

To every Church-Presentative there is a Patron : and it is he that hath the Advowson of a Parsonage, belonging to his Mannour, or otherwise in Gros ; and thereby may or ought to give the same Benefice, or present thereto, when and as often as it falleth void. And that is in case of Death, Resignation, Deprivation, or Session ; as by taking a Benefice incompatible. And this being Patron, had beginning, for the most part, by one of these three ways ; namely,

Either, *by reason of the Foundation* ; for that the Patron, or his Ancestors, *Co.Lit. 119.b.* or those, from whom he claims, were Founders, or Builders of the Church.

Or, *By reason of Donation* ; for that they did endow, or give Lands to the same, for maintenance thereof.

Or else, *By reason of the Ground* ; because the Church was set, or builded up on their Soil.

And many times by reason of them all three.

2. Vicars.

For the beginning of Vicaridges; the difference betwixt a Vicaridge, and an Advowson, and the several sorts of Vicaridges, I refer my Reader to *Davy's Reports*, f. 83. a. & *Cro. 2. p. f. 518.* and I shall only give him some little Information concerning Vicaridges, by shewing him somewhat of Impropriations.

Impropriations, or Appropriations, were (says my Author) when those Houses of the Romish Religion, and those Religious Persons; as Abbots, Priors and such like, had the Advowson of any Parsonage to them, and to their Successors; and obtained License of the Pope, and of the Ordinary, and King, that they themselves, and their Successors, from thenceforth, should be Parsons there: and that it shall be from thenceforth a Vicaridge, and that the Vicar should serve the Cure.

And so at the beginning, Appropriations were made only to those Persons Spiritual that could administer the Sacraments, and say Divine Service. As, Abbots, Priors, Deans, and such like.

After, by little and little, they were enlarged, and made to others; As namely, to a Dean and Chapter; which is a Body Corporate, consisting of many: which Body together could not say Divine Service.

And, which was more; To Nuns, that were Prioreesses of some Nunnery: which was a wicked thing. In so much as they could neither administer Sacraments, nor preach, nor say Divine Service to the Parishioners.

And all this was for pretence of Hospitality, and maintenance thereof. And, to supply these defects, a Vicar was devised; who should be Deputy to the Priors, or to the Dean and Chapter; and also, at the last, to the said Abbots, and others, to say Divine Service: and should have for his labour but a little Portion; and they, to whom the Appropriations were made, should retain the greater Revenues, and they did nothing for it. By means whereof Hospitality decayed in the place where it ought to have been chiefly maintained; namely, in the Parish where the Benefice was, and where the Profits did grow. And so it continues to this day; to the great hinderance of Learning, to the Impoverishment of the Ministry, and to the Infamy of the Gospel, and Professors thereof.

To this Learning of Impropriations, I shall add the very words of him, that was the Glory of his Age and Nation.

Lord Bacon.

In mine Opinion, and Sense (says he) I must confess (let me speak it with Reverence) that all the Parliaments, since the twenty seventh and thirty first of Henry the Eighth (who gave away Impropriations from the Church) seem to me to stand, in a sort, obnoxious, and obliged to God, in Conscience, to do somewhat for the Church; to reduce the Patrimony thereof to a Competency. For, since they have debarred Christ's Wife of a great part of her Dowry, it were reason they made her a competent Joynture.

Thus

Thus much for poor Vicars. I go on to the third degree of Spiritual Functions, containing Prebendaries and Chaplains.

3. Of those who have neither Cure, nor Jurisdiction:

Under this same Order I set Prebendaries, and Chaplains.

1. Prebendaries.

Prebend, and Prebendary are Terms often, used in our Books: and they come of the Latine [*Præbeo.*]

Prebend is that Portion, which every Member, or Canon of a Cathedral Church receiveth in the Right of his Place, for his Maintenance.

And Prebendary is he that hath such a Prebend.

It is resolved, that a Lay-Man may be presented to a Prebend; for, *Non habet curam animarum.* And it is said in our Books, that the Bishop is Patron and Ordinary of every Prebend; for all the Possessions of Prebends were at the first, the Bishops; and, *De mero Jure*, pertain to the Bishops.

Co. Lib. 3. Case del Dean & Chapter. f. 75. Cro. 1. p. Bland. Madox f. 79.

2. Chaplains.

Chaplain is he that performeth Divine Service in a Chappel; and therefore is commonly used for him that dependeth upon the King, or other Man of worth, for the Instruction of him and his Family, the Reading of Prayers, and preaching in his private House; where usually they have a Chappel for that purpose.

And for that they are retained by Letters under the Seal of their Patron, and thereby, by Intendment, are to be resident with them; the Law hath therefore given liberty for their Non Residence upon their Benefices.

If an Earl. or Baron retaineth a Chaplain, and before his Advancement, be attainted of Treason, there the Retainer is determined. And after the Attainder, such Chaplain cannot take a second Benefice; because he that is attainted, is, by his Attainder, a dead Person in Law.

The Wife of a Baron, during the Coverture, cannot retain a Chaplain; yet, when a Baroness Widdow retaineth one, or two, according to the Proviso of the Statute of the twenty first of *Henry the Eighth*, c. 13. the Retainer is the Principal matter: and as long as the Retainer is in force, and the Baroness continueth a Baroness, the Chaplains may well take two Benefices by the express Letter of the Statute; for it sufficeth, if at the time of the Retainer, the Baroness

Baronness were a Widdow. And herein this Rule is to be observed of a Woman that attaineth Nobility by Marriage. As, by Marriage of a Duke, Earl, or Baron, &c. For, in such case, if she afterward marry under the Degree of Nobility, by such Marriage with one that is not Noble, she loseth her Dignity, whereunto she had attained by Marriage. And after such latter Marriage, the power to retain a Chaplain is determined.

But otherwise it is, where a Woman is Noble by Descent: For there her Retainer, before or after the Marriage with one that is not Noble, shall be in force, and is not countermanded by the Marriage, nor determined by her taking of a Husband under her Degree. *Coke, lib. 4. fol. 118, 119. Alton's Case.*

If a Bishop be translated to an Arch-Bishop, or a Baron to be created an Earl, &c. yet, within the Statute of the twenty first of *Henry the Eighth*, they can have but only so many Chaplains as an Arch-Bishop, or an Earl might have: for, although he have divers Dignities, yet he is still but one self-same Person, to whom the Attendance and Service should be done. So, if a Baron be made a Knight of the Garter, or Lord Warden of the Cinque Ports, he shall have but three Chaplains in all. *Et sic de similibus.*

Thus having given my Reader a brief Account of the Superior and Inferior Clergy, I shall conclude my Discourse, by shewing some (among many) of the Privileges and Immunities appertaining to the Ecclesiastical Hierarchy in General.

The Immunities of the Clergy in General.

THe Kings of *England*, out of a zeal and desire they had, to grace and honour their Learned and Godly Clergy, were pleased to confer on them several Immunities: such as these following.

*Co. 2. Inst. f. 3. &
4.*

1. The Clergy were discharged of Purveyance for their own proper Goods.

Coke.

2. No Demefne, or proper Court for the necessary use of any Ecclesiastical Person ought to be taken for the King's Carriage, but they are exempted by the antient Law of *England*, from any such Carriage.

Coke.

3. If a Man holdeth Lands or Tenements, by reason whereof, upon Election to serve in a Temporal Office: If this Man be made an Ecclesiastical Person, within Holy Orders, he ought not to be elected to any such Office. And if he be, he may have the King's Writ for his Discharge.

*Co. Lit. f. 70. b.
Co. 2. Inst. 4.*

4. Ecclesiasticals are not bound to serve in Person at the Wars.

Coke.

5. All Ecclesiastical Persons ought to be quit, and discharged of Tolls and Customs, Avirage, Pontage, Paviage, and the like, for their Ecclesiastical Goods; and if they be molested therefore, they have a Writ for their Discharge.

6. If

If any Ecclesiastical Person be in fear or doubt, that his Goods, or Chattels, *coke.* or Beasts, or the Goods of his Farmer, &c. should be taken by the Ministers of the King, for the business of the King, he may purchase a Protection, *Cum Clausula Nolumus.*

7. Distresses shall not be taken by Sheriffs, or other of the King's Ministers, *coke.* in the Inheritance of the Church, wherewith it was antiently endowed.

8. If any Ecclesiastical Person acknowledge a Statute-Merchant, or Statute-*coke.* Staple, or a Recognizance in the nature of a Statute-Staple; his Body shall not be taken by force of any Process thereupon.

9. If a Person be bound in a Recognizance in Chancery, or in any other *coke.* Court, and he pay not the Sum at the day; by the Common Law, if the Person had nothing but Ecclesiastical Goods, the Recognizee could not have a *Levari facias* to the Sheriff, to levy the same of these Goods: but the Writ ought to be directed to the Bishop of the Diocese, to levy the same of his Ecclesiastical Goods.

10. In Action brought against a Person (wherein a *Capias* lieth;) For example, *coke.* an Account the Sheriff returns, *Quod Clericus est beneficiatus, nullum habens Laicum feodum*; in which he may be summoned: In this case the Plaintiff cannot have a *Capias* to the Sheriff, to take the Body of the Person; but he shall have a Writ to the Bishop, to cause the Person to come and appear.

11. Ecclesiastical Persons are not bound to appear at Tourns, or Views of *Marlb. c. 10.* Frank-pledge.

12. If any Ecclesiastical Person be amerced (though Amerciaments belong to *Co. 2. Inst. f. 29.* the King) yet he shall not be amerced, in respect of his Ecclesiastical Promotion or Benefice, but in respect of his Lay-Fee.

13. He that is within Holy Orders, hath this Privilege; that albeit he have *Co. 2. Inst. f. 37.* had the Privilege of his Clergy for a Felony, he may have his Clergy afterwards again: and so cannot a Lay-man.

14. No Clerk within Holy Orders, though he had a Knight's Fee, was compellable to be Knighted, according to the Statute, *De Militibus*; of the first of Edward the Second.

15. At the Common Law, at the first, the Benefit of the Clergy was not allowed but to Clerks in holy Orders, Secular and Religious. *Hobart's Rep. f. 288.*

16. If any Lay-men, with force, and strong hand, do enter upon, or keep *Co. Inst. f. 4.* the Possession, either of the Church, or of any of the Houses or Glebe, &c. belonging thereunto; the Incumbent, upon Certificate thereof of the Bishop, or without Certificate, upon his own surmise, may have a Writ to the Sheriff, *De vi Laica amovenda*: By which the Sheriff is commanded in these words; *Præcipimus quod omnem Vim Laicam seu armatam, qua se tenet in dicta Ecclesia seu domibus eidem annexis, ad pacem nostram in Com. tuo perturband. sine dilatione amoveas, & si quos in hac parte resistentes inveneris, eos per Corpora sua attachias & in prisona nostra salvo Custodias, &c.*

17. Ecclesiastical Livings are said to be in Abeyance: and this was provided *Co. Lit. 341. a.* by the Providence and Wisdom of the Law. And therefore, no Act of a Vicar-Predecessor should make a discontinuance, to take away the Entry of his Successor,

Successor, and to drive him to a real Action, whereby he should be destitute of maintenance in the mean time.

18. A general Accusation against a Parson, or Vicar, not good: and therefore, in a *Quare Impedit* against the Bishop, it is not a good Plea to alledge that the Presentee is a Schismatick in general; but he ought to express Schism in particular. But it is otherwise for the putting a Coroner out of his Office; for there is a general Suggestion in the Writ, that he is, *Persona minus Idonea*, is enough, and not Traversable.

Co. Lib. 8. 14. d.
Lib. 11. f. 70. d.

19. And last, Statutes which restrain Alienation of Ecclesiastical Livings, bind the King, though not named.

I shall conclude the whole Discourse with my hearty Prayer to God Almighty; that he would be pleased, always to defend the Church of *England* against the fierce Attempts of Halting *Loyola*, and Crook-back'd *Hudibras*.

The one would destroy her Priests: The other would devour her Patrimony.

The one would introduce the Pomp of Superstitious Tyranny: The other would bring in the Meanness of Fantastick Anarchy.

POSTSCRIPT.

POSTSCRIPT.

THe Highest and most binding Laws are the Statutes, which are established by the King in Parliament; and by Authority of that highest Court, it has been often times enacted (only to shew a tender care of Holy Church:) That all Ecclesiastical Persons shall enjoy all their Lawful Rights and Privileges, without any Subtraction, whatsoever, as appeareth by these Statutes after mentioned, which were but confirmations of such Rights and Immunities, as the Clergy had long before.

We have granted to God, and by this our present Charter, have confirmed *Magna Charta.* for us and our Heirs for ever; that the Church of *England* shall be free, and *c. 1. Ann. 9. H. 3.* shall have all her whole Rights.

That Holy Church have her Liberties in quietness, without interruption or disturbance. *14 E. 3. c. 1.* *Vide the same 25. E. 3. c. 1. 50. E. 3. c. 1.*

It is accorded and established, that Holy Church shall have and enjoy all her Rights, Liberties and Franchises, wholly, and without blemish. *1 R. 2. c. 1.* *Vide the same 2. R. 2. c. 1. 3. R. 2. c. 1. 5. R. 2. c. 1. 6. R. 2. c. 1. 7. R. 2. c. 1. 8. R. 2. c. 1. 12. R. 2. c. 1.*

That Holy Church have and enjoy all her Rights, Liberties, and Franchises, entirely, and without blemishing. *1 H. 4. c. 1.* *Vide 2. H. 4. c. 1. 4. H. 4. c. 1. 7. H. 4. c. 1. 9. H. 4. c. 1. 13. H. 4. c. 1.*

That Holy Church have all her Liberties and Franchises.

3 H. 5. c. 1.

That Holy Church shall have and enjoy all their Liberties and Franchises.

2 H. 6. c. 1.

In a word; The Statute of *Magna Charta* hath been confirmed (as I am told) thirty two times, and so have therefore, say I, the Rights and Priviledges that appertain to the Church of *England*.

With our Kings in Parliament, does concur the Emperor *Justinian* in his Codes.

Privilegia, qua generalibus Constitutionibus universis sacrosanctis Ecclesia Orthodoxa Religionis retro Principes prestituerunt, firma & illibata in perpetuum decernimus Custodiri. *ad. 1. 2. 13.*

Sicut ipsa Religio, & fidei Mater est perpetua, ita ejus patrimonium jupiter servetur illasum.

Now God Almighty give me favour in the Eyes of the Men, that they may send back that that is taken away already, and let that alone that yet remaineth.

FINIS.

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